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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/575,005 | 04/06/2006 | Warren Edward Roh | IDP-0401 US | 7008 |
| 25907 7590 05/26/2010 LAW OFFICE OF DALE B. HALLING 3595 FOUNTAIN BOULEVARD SUITE A2 COLORADO SPRINGS, CO 80910 | | | | |
| EXAMINER HELVEY, PETER N. | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3782 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/575,005

Applicant(s)

ROH, WARREN EDWARD

Examiner

PETER HELVEY

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-20 rejected under 35 U.S.C. 103(a) as being unpatentable over *Davis* (US Patent No. 6,155,410) in view of *Shields* (US Patent No. 5,507,422).

Davis discloses a universal carrying device, comprising: a first rectangular substantially planar cover (102) having a slot (Fig. 8, 9; col. 4, ll. 40-55) and having a lip/edge along a portion of a periphery of the first substantially planar cover (Fig. 8, 9); a second rectangular substantially planar cover (104, 110) having an opening (Fig. 8, 9); and a living hinge attaching the first substantially planar cover and the second substantially planar cover (32, Fig. 7 shows typical living hinge on device, same as used on embodiment of figures 8 and 9), wherein the first substantially planar cover snap fits with the second substantially planar cover, and the second planar cover (or carrier) having a hinge line (Fig. 8, 9), wherein the hinge line divides the second planar cover into a first part and a second part and allows the first part to pivot about the hinge line (Fig. 8, 9). *Davis* further discloses the opening having a wide end and a narrow end, the wide end near the hinge, a flange along a portion of the lip, the hinge line being a living

hinge, and the first planar cover having a printing surface (surface if *Davis* device is capable of being printed on).

Regarding the limitation, "a carrier adapter that engages the opening", the examiner is applying the following interpretation. Where applicant has failed to give a special definition, the broadest reasonable common meaning of the term "adapter", "somebody or something that changes something", will be applied. As such, the examiner considers the user's fingers, which engage the openings in the *Davis* device to be "adapters" because they apply a change to the carrier by removing its contents.

Regarding the limitation, "wherein the ledge reduces the chances of the universal carrier from dislodging from behind a user's belt", the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by (*Davis*) which is capable of being used in the intended manner, i.e., (placing the first cover of the device behind a user's belt). There is no structure in (*Davis*) that would prohibit such functional intended use (see MPEP 2111).

It should be appreciated that the applicant's functional language in the claims does not serve to impart patentability. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. Apparatus claims cover what a device is, not what a device does. A claim

containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior apparatus teaches all the structural limitations of the claims. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d, 1429, 1431-.2 (Fed. Cir. 1997); Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990); Ex parte Masham, 2 USPQ 2d 1647 (Bd. Pat. App. & Inter. 1987).

In order to illustrate the method by which the device taught by *Davis* is capable of attachment to a user's belt such that "the ledge reduces the chances of the universal carrier from dislodging from behind a user's belt", the examiner cites *Shields* (US Patent No. 5,507,422).

Shields teaches that interlocking plastic components are capable of attaching a device to a belt or strap (Figs. 9, 10).

Because the device taught by *Davis* meets all the structural limitations of the claim and is capable of being attached to a belt in such a manner that "the ledge reduces the chances of the universal carrier from dislodging from behind a user's belt", as evidenced by *Shields*, the examiner considers the combination *Davis* as modified by *Shields* to meet the scope of the claim.

Response to Arguments

3. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **PETER HELVEY** whose telephone number is (571)270-1423. The examiner can normally be reached on M-Th 8:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. H./
Examiner, Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782